

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CLERK'S MINUTES

BEFORE DISTRICT JUDGE JAMES O. BROWNING

CASE NO.:	14-2783 JB	DATE:	November 13, 2014
CASE CAPTION:	USA v. Rodella		
CRD:	K. Wild	COURT REPORTER:	M. Seal
COURT IN SESSION:	3:02 p.m. 4:12 p.m.	COURT IN RECESS:	3:53 p.m. = :51 5:32 p.m. = 1:20
			TOTAL = 2:11

TYPE OF PROCEEDING: Motion Hearing (see below)

COURT'S RULING/DISPOSITION:

1. Motion for a New Trial [133] – **WITHDRAWN IN PART – DEFENSE TO DETERMINE IF ANY PART OF MOTION NEEDS TO BE DECIDED**
2. Motion to Quash Subpoenas to Easter Seals El Mirador Employees to Testify at a Hearing or Trial in a Criminal Case [140] - **GRANTED**
3. El Centro Family Health's Motion to Quash Subpoena or for Protective Order [141] – **DENIED AS MOOT – TO BE WITHDRAWN**
4. Motion to Quash Subpoena for Trial Testimony of Dr. E. Davidson [144] - **GRANTED**

ORDER CONSISTENT WITH COURT'S RULING TO BE PREPARED BY:

ATTORNEYS PRESENT FOR PLAINTIFF(S):

Tara Neda/Jeremy Pena, AUSAs

ATTORNEYS PRESENT FOR DEFENDANT(S):

Robert Gorence (Retained)

Sabrina Rodriguez Salvado (for Easter Seals El Mirador)

Jerry Werthheim (for El Centro)

Erin Langenwalter (for Dr. E. Davidson)

PROCEEDINGS

COURT IN SESSION: **3:02 p.m.**

COURT: Calls case. Counsel enter appearances. Defendant present (in custody).

MOTION TO QUASH SUBPOENAS TO EASTER SEALS EL MIRADOR EMPLOYEES TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE [140]

Mr. Gorence: Thought had worked out issues with Easter Seal El Mirador and then motion to quash

was filed today - understand Tafoya's personnel file is here today – understand there are multiple incident reports of allegations of violence or abuse – one occurring on August 27, 2014 - understand El Mirador will require Court order before producing file – have not yet seen personnel file. Second, have new witness checks. Will be seeking testimony of all Easter Seal employees – particularly Nathaniel Salazar – he is not present today pursuant to the motion to quash – understood from him he was available to testify today. First witness to be called today will be Mavilis Tafoya.

Ms. Salvado: Addresses Court regarding personnel file – informs there are actually 2 files – requests personal information be redacted before being put into the record and requests Court review critical incident reports *in camera* as are protected by NM Administrative Code 7.1.17.14 and the Federal Safety and Quality Improvement Act of 2005 – suggests Court could compare reports to Ex. 3 to Govt.'s response to motion for new trial (summary) to ensure were adequately summarized.

Mr. Gorence: Do not oppose Court reviewing *in camera*, preliminarily, nor a confidentiality order – do oppose Court determining whether adequately summarized

Ms. Salvado: Do not oppose attorney's eyes only designation with defense counsel and AUSA reviewing while Court reviews, as well.

Court: Requests Ms. Salvado prepare protective order.

Mr. Pena: Do not oppose proposed procedure outlined by Court.

Court: Discusses Ex. 3 w/counsel .

Ms. Neda: Govt. prepared the summary.

Ms. Salvado: Requests Court quash subpoena to Paula Black – she has medical condition that prevents her from being present today – have submitted Affidavits from Ms. Black – one pertains to preparation of summary and the second is regarding her medical condition – reads same out-loud.

Ms. Neda: Marks as Govt.'s Exs. 10 and 11.

Ms. Salvado: Tenders protective order.

Mr. Gorence: Concurs with same. Moves to strikes Exs. 3, 10 and 11.

Court: Will deal with when Govt. moves admission of them.

Ms. Neda: Does not object to protective order tendered.

Court: Signs protective order and provides to CRD for entry on docket.

Mr. Gorence: Need some time to review documents, but to move things along will call Mavilis Tafoya.

EL CENTRO FAMILY HEALTH'S MOTION TO QUASH SUBPOENA OR FOR PROTECTIVE ORDER [141]

3:17 p.m. Mr. Wortheim: Addresses Court in support of motion to quash on behalf of El Centro – documents that are subpoenaed is the personnel file of Renee Dominguez – both witnesses are present for testimony today – as understand, there are two things at issue: 1) whether Dominguez was terminated from El Centro and 2) whether she used a fictitious name to apply for unemployment benefits to be charged against El Centro. Request protective order for documents requiring be sealed if put into record and on appeal and destruction of any extra copies.

Mr. Gorence: Fine, so long as can review entire personnel file.

Mr. Wertheim: Responds.

Mr. Gorence: Not amenable to Mr. Wertheim's proposal.

Ms. Neda: Does not oppose.

Mr. Wertheim: Will prepare protective order as have described, understand witnesses will not testify today, so will have to time draft and circulate.

Mr. Gorence: Not certain witnesses will not be called today.

Mr. Wertheim: Will work to draft order now.

Court: If office wants to draft and send to CRD, we will assist with same.

Mr. Wertheim: Will do so.

MOTION FOR A NEW TRIAL [133]

Mr. Gorence: Defendant calls MavilisTafoya (sworn)/conducts direct examination.

3:18 p.m. Ms. Neda: Requests bench conference.

Court: Conducts same – Govt. argues defense must satisfy *Sinclair* factors to get into testimony to be offered by Tafoya – defense describes intent with Tafoya - Court notes would be an entirely new motion and will need to file a motion to allow all parties to prepare for these new areas.

3:38 p.m. Open court.

Mr. Gorence: Continues direct examination of Tafoya.

3:41 p.m. Ms. Neda: Conducts cross examination of Tafoya.

3:50 p.m. Mr. Gorence: Conducts redirect examination of Tafoya.

3:53 p.m. Court: Excuses Tafoya from hearing.

Mr. Gorence: Need break to review personnel files.

Court in recess: 3:53 p.m.

Court in session: 4:12 p.m.

Mr. Gorence: Addresses Court regarding review of personnel files - requests continuance of hearing – believes after review will withdraw some of the subpoenas to Easter Seal employees – want to call Paula Black – do not need Lisa Bronowicz (HR Manager); as to Las Cumbres, if file does not contain information seeking will withdraw the subpoena. As to subpoena to Elizabeth Davidson – will Fedex check to general counsel if that tis the issue. Also, will be filing additional motion as to Mavilis Tafoya.

Ms. Neda: Responds – defense did not comply with rule 17 in subpoenaing witnesses today – situation is of his own making.

Ms. Salvado: Informs Lisa Bronowicz and Patsy Romero are present today.

Court: Appears were not properly served, so if want motion to quash granted will do so, but did bring folks here – will allow defense to call them if okay with their counsel.

Ms. Salvado: Requests Court quash subpoenas to Mark Johnson, Paula Black, Loreen Chavez and Nathaniel Salazar – withdraws motion as to Patsy Romero, as she can testify today.

Mr. Gorence: Responds.

Court: Defense should call Patsy Romero or Court is going to grant motion as to her, as well.

4:29 p.m. Mr. Gorence: Defendant calls Patsy Romero (sworn)/conducts direct examination.

4:48 p.m. Ms. Neda: Conducts cross examination of Romero.

4:49 p.m. Mr. Gorence: No further examination of Romero.

Court: Excuses Romero from stand.

Ms. Neda: Want to know what Defendant is reviewing at defense table – concerned reviewing documents subject to protective order.

Mr. Gorence: Informs he is/has not.

Court: Requests defense counsel disclose what Defendant is reviewing.

Mr. Gorence: List of witnesses subpoenaed.

Ms. Salvado: Withdraws motion to quash as to Bronowicz.

Court: Asks if any party wishes rule invoked?

Counsel do not care.

Court: Does not invoke rule.

4:54 p.m. Mr. Gorence: Defendant calls Lisa Bronowicz (sworn)/conducts direct examination.

5:04 p.m. Ms. Neda: Conducts cross examination of Bronowicz.

5:05 p.m. Mr. Gorence: No further examination of Bronowicz.

Court: Excuses Bronowicz from hearing.

Mr. Gorence: Argues in response to Easter Seal motion to quash.

Ms. Neda: No further argument on motion.

Ms. Salvado: Upon Court's inquiry, informs would like ruling on motion now.

Court: Quashes motions based on checks not being tendered at the time of service.

Mr. Wertheim: Heidi Tafoya and Darlene Romero are present today – will withdraw motion as to witness fees and mileage so long as defense agrees to provide those.

Mr. Gorence and Mr. Wertheim confer off record.

Mr. Gorence: Mr. Wertheim informs Ms. Dominquez was employed there, did resign, did apply for unemployment and did so under another name, but it was a maiden name – will no longer call fictitious – will not seek to call Heidi Tafoya or Darlene Romero – withdraws subpoenas.

Court: Denies motion as moot – requests Mr. Wertheim submit notice of withdrawal of motion.

Mr. Wertheim: Presume Govt. is releasing witnesses, as well.

Ms. Neda: Yes.

Court: Confirms defense counsel nor Govt. oppose motion being withdrawn.

Counsel confirm.

Ms. Neda: Would like to release witness from NM Dept. of Work Force Solutions subpoenaed regarding Dominguez.

Mr. Gorence: Okay to release – accepts Govt.'s proffer as to anticipated testimony of said individual.

MOTION TO QUASH SUBPOENA FOR TRIAL TESTIMONY OF DR. E. DAVIDSON [144]

Court: Asks if Dr. Davidson is present?

Mr. Gorence: Will need to respond to motion to quash as to Davidson.

Court: Confirms Ms. Langenwalter is not present right now.

Ms. Neda: Correct – outlines anticipated argument.

Court: Grants motion

Mr. Gorence: Would like to include in next motion for new trial.

Court: Confirms only 2 issues remaining in motion for new trial: 1) Dominguez – withdrawing:

Mr. Gorence: No – will be subpoenaing Wal-Mart records – withdraws portion of motion relating to El Centro.

Court: Will be giving some thought to withdrawing motion as to Easter Seal?

Mr. Gorence: Need to confer w/client re: same. Requests issue as to Dominguez/Wal-Mart be addressed at hearing to be set on next motion for new trial to be filed – requests 2 weeks to file said motion.

Ms. Neda: Does not oppose – informs defense is going to find that Dominguez never worked for Wal-Mart.

Court: At this time, will not block subpoena to Wal-Mart.

Mr. Gorence: Asks if can have Wal-Mart records subpoenaed to be received by Court for counsel to review here prior to next hearing?

Ms. Neda: Fine.

Court: Will not reset this hearing until defense counsel informs there is something left to be heard.

Court in recess: 5:32 p.m.